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ARIZONA ATTORNEY GENERAL

April 16, 1985

J. Michael Low
Arizona Department of Administration
State Capitol
1700 West Washington, Room 809
Phoenix, Arizona 85007

RE: I85-053 (R85-031)

Dear Mr. Low:

You have asked whether National Guard personnel while on training are state employees for purposes of state liability insurance and the Workers' Compensation Self-insurance Program.

The Arizona National Guard¹ is considered a state organization, except when activated for service by the President of the United States. Williams v. Superior Court, in and for County of Pima, 108 Ariz. 154, 494 P.2d 26 (1972). As a state organization, National Guard personnel would be considered state "employees" pursuant to A.R.S. § 12-820 et seq. and thus would have liability insurance coverage under A.R.S. § 41-621 et seq.

Although the Arizona National Guard is considered a state organization, the federal government, pursuant to the Federal Tort Claims Act, 28 U.S.C. § 2671, provides liability insurance coverage to members of the National Guard who are

1. A distinction is made between the Army and Air National Guards of the United States and the National Guards of the several states. The State National Guard units are not defined as Reserve Components of the Armed Forces. Instead, the State National Guard units are considered the organized militia of the states and territories. 10 U.S.C. § 101. For purposes of this opinion, we refer only to the State of Arizona National Guard.

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engaged in training or duty under 32 U.S.C. § 316 and 32 U.S.C. §§ 502 thru 505.^{2/} This federal liability coverage is available only when members of the National Guard are engaged in these activities. The state coverage provided by A.R.S. § 41-621, then, is considered excess coverage. See A.R.S. § 41-621.B. The state liability coverage is the primary coverage when National Guard personnel perform solely state active duty such as when the Governor calls the National Guard into service.

Finally, members of the National Guard are considered state employees for workers' compensation benefits pursuant to A.R.S. § 23-901(5)(i), which provides:

A member of the Arizona national guard, Arizona state guard or unorganized militia shall be deemed a state employee and entitled to coverage under the Arizona workers' compensation law at all times while such member is receiving the payment of his military salary from the state of Arizona under competent military orders or upon order of the governor. . . . No Arizona compensation benefits shall inure to a member compensable under federal law.

National Guard members, while on state active duty, are provided workers' compensation insurance pursuant to the foregoing statute. If a National Guard member is injured, however, while on federal active duty, the federal government, not the state, is responsible for the workers' compensation benefits.

Very truly yours,



BOB CORBIN
Attorney General

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2. These statutes refer to the National Guard inactive training, annual training, and any other training or duty under Title 32, United States Code.